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**IN THE UNITED STATES DISTRICT COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

LISA S. BLACK,) CIVIL ACTION NO. 05-0038

Plaintiff,

VS.

**JIM BREWER, individually and in his) SCHOOL SYSTEM'S OPPOSITION
official capacity as Acting Principal for) TO MOTION IN LIMINE TO
Hopwood Junior High School,) PRECLUDE INTRODUCTION OF
COMMONWEALTH OF THE NORTHERN) IRRELEVANT, PREJUDICIAL
MARIANA ISLANDS PUBLIC SCHOOL) CHARACTER EVIDENCE
SYSTEM, and JOHN AND/OR JANE DOE,)**

Defendants.

) CIVIL ACTION NO. 05-0038

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DEFENDANT CNMI PUBLIC

SCHOOL SYSTEM'S OPPOSITION TO MOTION IN LIMINE TO PRECLUDE INTRODUCTION OF IRRELEVANT, PREJUDICIAL CHARACTER EVIDENCE

Trial Date: February 20, 2007

Hon. Terry Hatter

Introduction

The CNMI Public School System is in opposition to Plaintiff's motion in limine to preclude introduction of irrelevant, prejudicial character evidence. The evidence sought to be introduced is relevant considering the issues to be tried in this matter and should be admitted.

Argument

1 The character evidence that PSS intends to introduce is not to justify the non-renewal
2 of Plaintiff's contract. The issues left in this case relevant to her allegation of violation of
3 rights guaranteed by the CNMI Constitution include whether Defendants took action against
4 Plaintiff to prevent her from being able to secure a job in the CNMI. Evidence regarding
5 Plaintiff's behavior and performance at other schools because it indicates that there are
6 reasons other than any actions by Defendants that prevented Plaintiff from being employed in
7 the CNMI. In addition, Plaintiff will likely claim that Defendant Brewer's disciplinary
8 actions are based on reasons other than Plaintiff's behavior and performance. The fact that
9 plaintiff has a history of insubordination and problems getting along with colleagues is
10 relevant to the defense in this case. Defendants must have the opportunity to demonstrate
11 that Plaintiff through her interactions with colleagues and superiors at Hopwood and other
12 schools provided more than enough information to cause employers not to want to hire her
13 without any effort by Defendants to blacklist her.

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16 **Character Evidence**

17 Where a person's character is an issue in a case within the meaning of Rule 404 (a) or
18 Rule 405(b) character evidence is admissible to show action in conformity with that character.
19 Here, Plaintiff claims that Defendants have made charges against Plaintiff that might
20 **seriously damage her standing** and association in the community and that defendants
21 imposed **a stigma or other disability** upon Plaintiff that foreclosed her freedom to take
22 advantage of other employment opportunities. Her performance as a teacher at Hopwood and
23 other schools is material to Defendant's case.

24 Defendant PSS is accused of black listing the plaintiff. Where a character trait is an
25 essential element of a claim, charge, or defense in lawsuit, character evidence is admissible on
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1 propensity. Plaintiff is suing Defendant PSS for imposing a stigma on her and seriously
2 damaging her standing in the community. Plaintiff's background of employment with the very
3 same employer she is accusing, is material and relevant thus character evidence is admissible.
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5 Under Rule 405, methods of proving character may be used by specific instances of
6 conduct. In cases, such as this one, in which character or a trait of character of a person is an
7 essential element of a charge, claim or defense, proof may also be made of specific instances
8 of that person's conduct. The exception to allowing evidence of a person's character evidence
9 is relevant and necessary as Plaintiff claims she was black listed due to her involvement in the
10 letter of concern at Hopwood. Defendant PSS will argue and present a defense that shows
11 Plaintiff's tarnished her own image, and seriously damaged her own standing long before her
12 employment at Hopwood. Although Plaintiff does not want evidence of her character
13 admitted because she concludes evidence will show she is a "bad teacher and a lousy person,"
14 the evidence should be left for a fact finder to make the conclusion. Unfortunately for
15 Plaintiff, she believes her past employment record will show she is a "bad teacher" and "lousy
16 person", however that is the same evidence that Defendant PSS is relying on to defend the
17 claims that Plaintiff is not black listed and that Defendant did not impose any stigma on her
18 reputation.
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20 Plaintiff's character is relevant as to why other principals did not hire Plaintiff.
21 Plaintiff is charging PSS with imposing a stigma on her ability to teach. Plaintiff's character
22 is relevant to the issues in this trial. The documents regarding her non-renewal go the heart of
23 her character and her image in the educational community. Insubordination, letter of
24 reprimand and non-renewal notices are exactly what is at issue, whether defendants created a
25 stigma or Plaintiff created it herself.
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1 **Past Performance is Relevant**

2 Under Rule 401 relevant evidence means evidence having any tendency to make the
3 existence of any fact that is of consequence to the determination of the action more probable
4 or less probable than it would be without the evidence. Evidence is relevant if it has any
5 tendency to establish a proposition or fact that is material to the lawsuit. (A practical guide to
6 Federal Evidence, Bocchino & Sonenshein, 1996, p. 31)

7 Although Plaintiff argues that all “Evidence which is not relevant is not admissible”,
8 defendant will argue another line of Rule 402 that “all relevant evidences admissible, except
9 as otherwise provided [.]” Plaintiff is suing Defendant PSS for imposing a stigma on her and
10 seriously damaging her standing in the community. Plaintiff’s background of employment
11 with the very same employer she is accusing, is a material issue and is relevant. There is a
12 philosophy in favor of admitting evidence and allowing the fact finder to determine the
13 weight to be given the evidence. In this case Plaintiff’s past work performance with PSS has a
14 logical relationship to reasons she may not have been rehired from the same employer. The
15 fact that Plaintiff would not have been hired by schools for reasons other than Plaintiff’s
16 claims of blacklisting are clearly relevant and admissible.

17 Previous employment and performance during that employment is relevant in any job
18 search. References from prior employers are often used to determine whether an applicant is
19 acceptable. Plaintiff’s performance and behavior at schools both at Hopwood and elsewhere
20 is admissible to show that Plaintiff would have been unable to obtain employment regardless
21 of any efforts by PSS to blacklist her. Plaintiff’s history of insubordination and problems
22 getting along with colleagues is relevant it could help the jury understand why potential
23 supervisors for Plaintiff would not consider her employment.

1 Past performance and non-renewals of employment are relevant to show that the
2 stigma Plaintiff alleges that was placed on her by PSS was in fact self-created by her previous
3 employment record including non-renewals and other documentation regarding
4 insubordination.

5 Plaintiff is characterizing the evidence of her non-renewals as equating the non-
6 renewals to plaintiff being a bad person. Those are the words that Plaintiff is using in her
7 motions, not the characterization by Defendants. Defendants are saying that the two non-
8 renewals and numerous insubordinations are possible reasons that are necessary and logical to
9 present to the jury as to why other principals within PSS did not hire plaintiff. The issues is
10 not as simple as Defendant blacklisting her for conduct as Hopwood, which she alleges and
11 PSS denies, but reasons for her alleged stigma can be found in other areas including the non-
12 renewals and disciplinary actions by other schools.

13 The other issue is in regards to the intentional infliction of emotional distress claim of
14 whether defendants engage in conduct that was extreme and outrageous- if the conduct
15 alleged is not giving Plaintiff a job at PSS or in the community, then again the issue of
16 previous non-renewals is relevant.

17 **Conclusion**

18 Defendant PSS is quite aware that the issue regarding Plaintiff's non-renewal is settled
19 as Defendant prevailed on the issue. Documents used to support the non-renewal are still
20 relevant to show why Defendant Public School System and other employers did not hire
21 Plaintiff. Plaintiff's past record of insubordination, performance, letters of reprimand and
22 other documents go to the core of the defense in the remaining issue at trial that Defendant did
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1 not place a stigma and seriously damage her reputation in the community or intentionally
2 inflict emotional distress by preventing her from obtaining employment.

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6 Submitted this 14th day of February, 2007.
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/s/
6 Heather L. Kennedy F0246
7 Karen M. Klaver F0241
8 Attorneys for the Public School System
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